



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2013-0018]

RIN 1625-AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish and modify anchorage grounds within the Port of New York. This action is necessary to facilitate safe navigation and provide safe and secure anchorages for vessels operating in the area. This proposed rule is intended to increase the safety of life and property of both the anchored vessels and those operating in the area as well as provide for the overall safe and efficient flow of commerce.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Sector New York, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4195, E-Mail Jeff.M.Yunker@uscg.mil or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617-223-8385, E-Mail

Craig.D.Lapiejko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara

Hairston, Program Manager, Docket Operations, telephone
202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
WAMS	Waterways Analysis and Management System

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be

considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0018] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0018) in the "SEARCH" box and click "SEARCH." Click

on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This proposal was assessed as part of a Waterways Analysis and Management System (WAMS) review of the New York Vessel Traffic Lanes and Approaches to New York Harbor with the intent of optimizing the waterway and aids to navigation. The Coast Guard received six responses to the survey included in the WAMS review. The survey responses reported that Anchorage Ground No. 27(ii) Romer Shoal and Anchorage Ground No. 27(iii) Flynn's Knoll, near Sandy Hook, NJ are not used because their locations leave vessels exposed to swells and that there are safer anchorage grounds available in Lower New York and Sandy Hook Bays.

The New York District Army Corps of Engineers (ACOE) was consulted on this regulation and had no objections.

In addition, the Hudson River Pilots Association requested the Coast Guard establish a federal anchorage ground near Yonkers, NY on the Hudson River.

The purpose of this rule is to accommodate ship traffic awaiting berthing space, favorable weather,

daylight hours, tidal conditions for transits, and/or other unforeseen conditions to improve navigation safety; clarify positions of current areas being used for vessels anchoring; and reduce regulatory burden by disestablishing anchorage grounds that are no longer used and therefore deemed unnecessary.

C. Discussion of Proposed Rule

We propose to establish a new Anchorage Ground No. 18 in the Hudson River west of Yonkers, NY. The anchorage ground would be approximately 0.22 square nautical miles (2,010 yards long by 420 to 470 yards wide). The eastern boundary of this anchorage ground would be about 470 yards west of the Yonkers Municipal Pier. The Hudson River Pilots requested this anchorage ground be established for the following reasons: a) for vessels waiting favorable tides and/or daylight to transit to upstream ports on the Hudson River, b) for vessels waiting anchorage space in New York Harbor to take on bunker fuel and/or stores, and c) to relieve congestion in New York Harbor anchorage grounds. The proposed anchorage ground would formalize and codify the current anchoring practices of commercial vessels in Yonkers, NY. The anchorage ground would adequately accommodate two ships at a time and would provide sufficient maneuvering clearance for ships entering or

departing the anchorage ground. An area approximately 1,030 feet east of this anchorage ground would be in place for vessels to transit and still not interfere with the U.S. Army Corps of Engineers New York District designated 600 foot wide federal navigation channel. This anchorage ground would only be authorized for usage by ships.

We propose to reduce the size of the current Anchorage Ground No. 17 by an area of approximately 0.07 square nautical miles (910 yards long by 300 yards wide). This proposed reduction at the northeast corner of the current Anchorage Ground No. 17 is intended to limit confusion caused by the overlapping of the southwest corner of the proposed new Anchorage Ground No. 18 with the current northeast corner of Anchorage Ground No. 17.

We propose to update the description of the Anchorage Ground No. 27(i) boundary in the Atlantic Ocean. This is necessary due to the disestablishment of Sandy Hook Light 15, which was used as a reference point. We would update the other anchorage ground coordinates to correspond to what is currently displayed on the navigation charts. Additionally, we would re-designate the anchorage ground as Anchorage Ground No. 27 due to the proposed disestablishment of Anchorage Ground No. 27(ii) at 33 CFR 110.155(f)(2)(ii) and Anchorage Ground No. 27(iii) at 33

CFR 110.155(f)(2)(iii).

We propose to disestablish Anchorage Ground No. 27(ii) Romer Shoal and Anchorage Ground No. 27(iii) Flynn's Knoll, near Sandy Hook, NJ. The irregular shaped area of Anchorage Ground No. 27(ii) Romer Shoal is about 4.08 square nautical miles (5.5 nautical miles long by 0.3 to 1.3 nautical miles wide). The irregular bowl-shaped area of Anchorage Ground No. 27(iii) Flynn's Knoll is about 3.35 square nautical miles. These proposals were reviewed as part of a Waterways Analysis and Management System (WAMS) review of the New York Vessel Traffic Lanes and Approaches to New York Harbor with the intent of optimizing the waterway and the aids to navigation therein. The Coast Guard received six responses to the survey included in the WAMS review. The survey responses reported that these two anchorage grounds are not used because their locations leave vessels exposed to swells and there are safer anchorage grounds available in the Lower New York and Sandy Hook Bays. These anchorage grounds provide better protection from impacts of winds and seas on anchored vessels than the offshore Anchorage Grounds No. 27(ii) and No. 27(iii).

D. Regulatory Analyses

We developed this proposed rule after considering

numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect minimal additional cost impacts to the industry because this rule is not imposing fees, permits, or specialized requirements for the maritime industry to utilize these anchorage grounds. The effect of this rule would not be significant as it removes two obsolete anchorage grounds that are no longer used and codifies one anchorage ground that is currently used by commercial vessels as a general anchorage area. This would represent an improvement to the safety of vessels using the anchorage grounds, facilitate the transit of deep draft vessels through the adjoining waterways, and increase mariner

awareness that they can expect to find anchored vessels in the vicinity.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels that have a need to anchor or transit through the lower Hudson River near Yonkers, NY; and Lower New York Bay near Romer Shoal and Flynn's Knoll near Sandy Hook, NJ.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule would only codify current navigation practices already in use by commercial

vessels in these areas. The anchorage grounds would not affect vessels' schedules or their abilities to freely transit near these areas within the Captain of the Port New York zone. The anchorage grounds would not impose any monetary expenses on small entities because it does not require them to purchase any new equipment, hire additional crew, or make any other expenditures.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action

of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects

of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an

economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves disestablishing two unused anchorage grounds, establishing one anchorage ground, updates the coordinates of one anchorage ground, and reduces the size of one anchorage ground resulting in a reduction in the overall size of the anchorage grounds by 7.28 square nautical miles in the Captain of the Port New York zone. This rule may be categorically excluded from further review under paragraph 34(f) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 110.155 revise paragraphs (c) and (f) to read as follows:

§ 110.155 Port of New York.

* * * * *

(c) * * *

(2) Anchorage No. 17. All waters of the Hudson River bound by the following points: 40°56'26.66"N, 073°55'12.06"W; thence to 40°56'22.54"N, 073°54'49.77"W; thence to 40°55'56.00"N, 073°54'58.00"W; thence to 40°55'54.15"N, 073°54'46.96"W; thence to 40°54'18.43"N, 073°55'21.12"W; thence to 40°52'27.59"N, 073°56'14.32"W; thence to 40°51'34.20"N, 073°56'52.64"W; thence to 40°51'20.76"N, 073°57'31.75"W; thence along the shoreline to the point of origin (NAD 83).

(i) When the use of Anchorage No. 17 is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(ii) [Reserved]

(3) * * *

(4) Anchorage No. 18. All waters of the Hudson River bound by the following points: 40°56'54.0"N, 073°54'40.0"W; thence to 40°56'51.0"N, 073°54'24.0"W; thence to 40°55'53.0"N, 073°54'40.0"W; thence to 40°55'56.0"N, 073°54'58.0"W; thence to the point of origin (NAD 83).

(i) This anchorage ground is reserved for use by ships only.

(ii) [Reserved]

* * * * *

(f) * * *

(2) Anchorage No. 27. Atlantic Ocean -

(i) All waters bound by the following points:

40°28'49.27"N, 074°00'12.13"W; thence to 40°28'52.12"N, 074°00'00.56"W; thence to 40°28'40.88"N, 073°58'51.95"W; thence to 40°25'57.91"N, 073°54'55.56"W; thence to 40°23'45.55"N, 073°54'54.89"W; thence to 40°23'45.38"N, 073°58'32.10"W; thence along the shoreline to the point of origin (NAD 83).

(ii) [Reserved]

(iii) [Reserved]

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Dated: July 2, 2013

V. B. Gifford
Captain, U.S. Coast Guard
Acting Commander, First Coast Guard District

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